

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES MARINER,

Defendant.

No. CR06-3013-MWB

**DETENTION ORDER**

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This matter came on for detention hearing on May 1, 2006. Assistant U.S. Attorney Shawn Wehde appeared on behalf of the plaintiff (the "Government"). The defendant James Mariner appeared in person with his attorney, Jim McGough. The Government offered the testimony of Task Force Officer David Tyler.

The court must determine whether any condition or combination of conditions will reasonably assure Mariner's appearance as required, as well as the safety of any other person and the community, in deciding whether to grant the Government's motion for detention. 18 U.S.C. § 3142(e). A defendant may be detained based on a showing of either dangerousness or risk of flight; it is not necessary to show both. *United States v. Apker*, 964 F.2d 742, 743 (8th Cir. 1992); *United States v. Sazenski*, 806 F.2d 846, 848 (8th Cir. 1986).

The court is to presume that no condition or combination of conditions will reasonably assure the appearance of Mariner as required and the safety of the community if the court finds there is probable cause to believe Mariner committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act, 21 U.S.C. § 801 *et seq.* This presumption is subject to rebuttal by Mariner. 18 U.S.C. § 3142(e); *see* 18 U.S.C. § 3142(f)(1)(C). The probable cause element of section 3142(e) that triggers the rebuttable presumption of risk of flight and

danger to the community may be established through evidence presented at the detention hearing of an offense which is subject to the rebuttable presumption. *See Apker*, 964 F.2d at 744; *United States v. Dorsey*, 852 F.2d 1068, 1069 (8th Cir. 1988). A grand jury's indictment provides the probable cause required under 18 U.S.C. § 3142(e) to trigger the rebuttable presumption of risk of flight and danger to the community. *See United States v. Garcia*, 801 F. Supp. 258 (S.D. Iowa 1992) (citations omitted).

In the present case, the evidence indicates Mariner has three prior felony convictions, and three more felony charges pending. He has been involved in almost continuous illegal activity for a long period of time, committing many offense while he was out on bond or under supervision from other charges. In addition to drug activities, he allegedly was involved in robbery to collect a drug debt that involved an assault with a baseball bat. There is also evidence Mariner refused to stop for officers on one occasion.

In addition, Mariner has failed to offer any evidence to rebut the presumption that he would be a danger to the community. The presumption arises from the charge itself – a serious drug charge involving the manufacture and distribution of a significant quantity of methamphetamine. *See United States v. Cox*, 635 F. Supp. 1047, 1055 (D. Kan. 1986) (citing *United States v. Fortna*, 769 F.2d 243, 247 (5th Cir. 1985)). Viewing the record as a whole, the court finds nothing to indicate Mariner would be able to refrain from continuing to engage in criminal activities if he were released, and there are no conditions of release that could be imposed to guarantee the safety of the community.

Accordingly, the court finds the Government has proved by clear and convincing evidence that Mariner would be a danger to the community if released. Therefore, the court finds the following:

1. Mariner is committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal.

2. The Attorney General shall afford Mariner reasonable opportunity for private consultation with counsel while detained.

3. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver Mariner to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

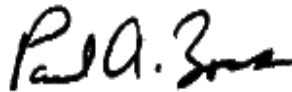
4. If a “review” motion for revocation or amendment is filed, pursuant to 28 U.S.C. § 3145(a) or (b), the party requesting a change in the original order *must*:

- (a) Attach a copy of the release/detention order to the appeal;
- (b) Promptly secure a transcript.

5. There is *no automatic stay* of this Order. Therefore, Mariner must request such relief from the court.

**IT IS SO ORDERED.**

**DATED** this 2nd day of May, 2006.



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PAUL A. ZOSS  
MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT